

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI

ASARCO, LLC, a Delaware corporation,)
Plaintiff,) Case No. 4:11-cv-00864-JAR
v.)
NL INDUSTRIES, INC., et al.,)
Defendants.)

DEFENDANTS' STATUS REPORT ON GOVERNMENT'S REMEDIATION PROCESSES

Pursuant to the Court's Memorandum and Order dated March 11, 2013, the undersigned Defendants, by their respective counsel, submit the following status report on the government's remediation processes with regard to the Southeast Missouri Lead Mining District (the "SEMO Sites") but limited to areas where the undersigned Defendants are allegedly connected:

- The SEMO Sites cover large parts of multiple counties, including St. Francois, Madison, Iron, and Reynolds counties and contain multiple mining sub-districts, including Old Lead Belt, Mine LaMotte-Fredericktown, Viburnum, Indian Creek, and Shirley-Palmer.
- EPA has designated many of these mined areas as Superfund Sites, including Big River Mine Tailings, Madison County Mines, Washington County Lead District, among others.
- Each of EPA's designated Superfund Sites typically consists of multiple mines or mined areas.
- Each of the mines or mined areas designated as Superfund Sites typically consist of multiple Operable Units.

Anschutz Mining Corp. is alleged to be involved only in a small portion of the overall SEMO Sites investigation and remedial activities at only one sub-site, known as OU2, that includes the Madison Mine currently owned by Anschutz Mining Corp.

NL Industries, Inc. (“NL”) is alleged to be involved in only a very small portion of the overall SEMO Sites investigation and remedial activities with past or current activity allegedly at only three sub-sites, the National Pile (within the Big River Mine Tailings Site), the Anschutz sub-site (Madison Mine-Fredericktown) within the Madison County Mines Site, and the Northern Madison County Unit (Mine LaMotte) within the Madison County Mines Site.

Union Pacific Railroad Company has not been named by EPA at any of the SEMO Sites and is not presently aware of any activities being undertaken by EPA.

- At the National Pile, one of eight sites within the Big River Mine Tailings Superfund Site, NL with another company, Doe Run, is completing a Non-Time Critical Removal Action. Similar actions are underway or have been completed at the other seven mine sites. NL along with two other potentially responsible parties recently received a Special Notice Letter pursuant to Section 122(e) of CERCLA, 42 U.S.C. § 9622(e), from EPA for residential clean-up (OU1) of some 4,000 residences across the entire Big River Mine Tailings Site area at a present value cost of over \$107 million. NL is still in the process of responding to that Notice, although it is allegedly responsible for only a small share of the overall residential clean-up. Additionally, EPA has designated an Operable Unit 2, which will address terrestrial ecological risks and impacts to watersheds associated with mines and waste areas, i.e., impacts to river sediments and surface waters. EPA has not completed its investigation and no remedy has yet been proposed for Operable Unit 2 at the Big River Site. The government continues to diligently work to address terrestrial contamination issues at the Big River Mine Tailings Superfund Site. See https://www.fbo.gov/index?s=opportunity&mode=form&id=b3d53f5065f0c3efd38bf9a6b09533b5&tab=core&_cview=1 [Oct. 17, 2013 EPA contract award at Big River Mine tailings]
- Federal and State Natural Resource Trustees are actively assessing damages to natural resources in support of their claims under 42 U.S.C. § 9607(a)(4)(C) for damages to the environmental resources over the large area and waterways associated with the Big River Mine Tailings Site and the SEMO Site overall, the clean-up and costs of which will not be known or occur for some years into the future. Those activities are active and ongoing. For example, the public comment period for the Southeast Missouri Ozarks Regional Restoration Plan ended on December 4, 2013. The Trustees are working now to reconcile and respond to comments received during the comment period. They will publish a final document that responds to comments received as soon as possible. See <http://www.fws.gov/Midwest/es/ec/nrda/SEMONRDA/index.html> (last visited 3-11-14)
- At the Madison County Mines Superfund Site, EPA is involved in a wide range of activities at various stages of development for the seven Operable Units, including cleanup of Residential Soils (OU3) and various Assessments, Remedial Investigations, and Feasibility Studies at OU1, OU2, OU3, OU4, OU5, and OU6.

EPA has also designated an OU7 LSFR Watershed at the Madison County Mines Superfund Site. LSFR is the designation for the Little St. Francois River. According to the CERCLIS database, EPA has not begun the study of that OU, but future study is expected. Follow-up action by the EPA for those matters is anticipated to occur over years into the future with responsibility and significant cost yet to be determined. At the Anschutz sub-site (OU2), only one of the seven Operable Units, NL has been involved with Anschutz Mining Corp., another potentially responsible party, to complete a Removal Assessment and Removal Action and Operation and Maintenance activities. At the Northern Madison County Unit (OU1), Mine LaMotte, NL along with the other alleged potentially responsible party completed some time ago a limited Site Characterization and Risk Assessment. Additional activities may be pursued by the EPA in the future. As of this date, only two Records of Decision ("RODs") (for OU4 and OU5) and one interim ROD (OU3) have been issued with respect to the seven Madison County OUs. The remaining four OUs will be addressed according to US EPA, in future RODs for remedial action. Since Defendants' September 11, 2013 status report, EPA has issued a Five-Year Review Report for Madison County Mines Superfund Site ("FYR"), available at <http://www.epa.gov/region07/cleanup/superfund/5year2013/5year-review-madison-county-mines-mo.pdf> (last visited 3-11-2014).

Dated: March 11, 2014.

Respectfully submitted,

/s/ Joel L. Herz

Joel L. Herz, *Admitted Pro Hac Vice*
Arizona State Bar No. 015105
LAW OFFICES OF JOEL L. HERZ
3573 East Sunrise Drive, Suite 215
Tucson, AZ 85718
(520) 529-8080
(520) 529-8077 (facsimile)
Email: joel@joelherz.com

W.C. Blanton
Missouri State Bar No. 54125
HUSCH BLACKWELL LLP
4801 Main Street, Suite 1000
Kansas City, MO 64112
(816)983-8000
(816)983-8080 (facsimile)
Email: WC.blanton@huschblackwell.com

ATTORNEYS FOR DEFENDANT
NL INDUSTRIES, INC.

Dated: March 11, 2014

/s/ Carolyn L. McIntosh

Stephen M. Buckley
Ann E. Buckley
BUCKLEY & BUCKLEY, LLC
1139 Olive Street, Suite 800
St. Louis, Missouri 63101-1928
Telephone: (314) 621-3434
Facsimile: (314) 621-3485
E-Mail: SBuckley@buckleylawllc.com
E-Mail: ABuckley@buckleylawllc.com

Carolyn L. McIntosh
Maxine S. Martin
PATTON BOGGS LLP
1801 California Street, Suite 4900
Denver, Colorado 80202
Telephone: (303) 894-6127
Facsimile: (303) 894-9239
E-Mail: cmcintosh@pattonboggs.com
E-Mail: msmartin@pattonboggs.com

Michael Connelly
CONNELLY BAKER WOTRING L.L.P.
700 JPMorgan Chase Tower
600 Travis
Houston, Texas 77002
Telephone: (713) 980-1700
Facsimile: (713) 980-1702
E-Mail: mconnelly@connellybaker.com

Norton A. Colvin, Jr.
COLVIN, CHANEY, SAENZ & RODRIGUEZ,
LLP
P.O. Box 2155
Brownsville, Texas 78522
Telephone: (956) 542-7441
Facsimile: (956) 541-2170
E-Mail: na.colvin@rcclaw.com

ATTORNEYS FOR DEFENDANT UNION
PACIFIC RAILROAD COMPANY

Dated: March 11, 2014

/s/ John F. Cowling

John F. Cowling
Winston E. Calvert
ARMSTRONG TEASDALE LLP
7700 Forsyth Boulevard, Suite 1800
St. Louis, Missouri 63105
Telephone: (314) 621-5070
Facsimile: (314) 621-5065
E-Mail: jcowling@armstrongteasdale.com
wcalvert@armstrongteasdale.com

ATTORNEYS FOR DEFENDANT ANSCHUTZ
MINING CORPORATION

CERTIFICATE OF SERVICE

I certify that on the 11th day of March, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record.

/s/ Joel L. Herz

Joel L. Herz, *Admitted Pro Hac Vice*
LAW OFFICES OF JOEL L. HERZ
3573 E. Sunrise Drive, Suite 215
Tucson, AZ 85718